

Message Text

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TO AMEMBASSY CARACAS

C O N F I D E N T I A L STATE 177705

STADIS////////////////////////////////////

EXDIS, FOR AMBASSADOR RICHARDSON

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: TEXT OF MEMORANDUM FROM UNDER SECRETARY COOPER

1. FOLLOWING IS TEXT OF MEMORANDUM DATED JULY 11 FROM UNDER SECRETARY COOPER TO YOU, WITH COPIES TO SECRETARY AND DEPUTY SECRETARY.

2. BEGIN TEXT:

-- AFTER OUR MEETING ON JUNE 2, I FELT IT WOULD BE HELPFUL TO TAKE A MORE THOROUGH LOOK AT A NUMBER OF ASPECTS OF THE SEABEDS REGIME NOW UNDER DISCUSSION. THESE INCLUDE:

--THE WORKABILITY OF THE PARALLEL SYSTEM OF EXPLORATION AND EXPLOITATION;

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--- THE LIKELY CONSEQUENCES OF PRODUCTION CONTROLS AND WHETHER THEY WOULD PLACE AN UNDUE RESTRAINT ON PRODUCTION AND ENTRY INTO SEABED MINING, GIVEN THE LIKELY GROWTH IN WORLD DEMAND;

--- THE IMPLICATION OF THE PROCEDURES TO REGULATE TRANSFER OF TECHNOLOGY;

--- THE PROTECTION AFFORDED US BY THE VOTING STRUCTURE IN THE COUNCIL.

-- A SET OF ANALYSES OF THESE AND RELATED ISSUES HAS BEEN PREPARED BY TREASURY AND BY THE BUREAU OF ECONOMIC AND BUSINESS AFFAIRS. IT WOULD BE USEFUL FOR THE TWO OF US TO DISCUSS THESE ISSUES IN SUFFICIENT TIME BEFORE THE RESUMPTION OF NEGOTIATIONS IN NEW YORK SO THAT WE MIGHT HAVE A CLEAR UNDERSTANDING OF THE OPTIONS AVAILABLE TO US IN OBTAINING A DESIRABLE REGIME FOR THE SEABEDS. I UNDERSTAND THAT MIKE BLUMENTHAL IS GOING TO PROPOSE THAT LOS BE DISCUSSED AT THE CABINET LEVEL BEFORE NEGOTIATIONS RESUME. I SHOULD HOPE THAT WE MIGHT ARRANGE OUR INFORMAL DISCUSSION BEFORE SUCH A MEETING.

(1) PARALLEL SYSTEM.

-- AT A GENERAL LEVEL, THE SEABEDS TEXTS DO NOT ESTABLISH THE SYSTEM OF PARALLEL ACCESS THAT THE US HAS ADVANCED FOR STATE PARTIES AND THE ENTERPRISE. RATHER, THE TEXTS SUGGEST A TEMPORARY SYSTEM OF PARALLEL PRODUCTION, WHICH IS STRONGLY BIASED TOWARD JOINT VENTURES. MOREOVER, THE TERMS BY WHICH STATE PARTIES WOULD PARTICIPATE WOULD BE DETERMINED BY AN AUTHORITY WITH BROAD DISCRETIONARY POWER OVER THE ACCESS OF PRIVATE MINING COMPANIES TO THE SEABED AND THE CONFIDENTIAL

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TENURE OF THEIR CONTRACTS. THIS TEMPORARY SYSTEM WOULD IN TIME BE SUPPLANTED BY COMPLETE CONTROL OF THE SEABEDS BY THE AUTHORITY.

-- DESPITE EFFORTS TO CHANGE THEM, THE CURRENT TEXTS DO NOT SATISFY OUR FUNDAMENTAL OBJECTIVE OF PROVIDING ASSURED ACCESS TO SEABED RESOURCES FOR THE US AND OTHER COUNTRIES. NOR WOULD THE SYSTEM ENVISAGED IN THE TEXT PROVIDE INCENTIVES SUFFICIENT FOR INDUSTRY TO BE WILLING TO DEVELOP THE TECHNOLOGY TO EXPLOIT THE SEABEDS. IF THE STRUCTURE AND OPERATION OF THE SYSTEM BEING CREATED ARE INCONSISTENT WITH OUR OBJECTIVE OF CREATING INTERNATIONAL ECONOMIC INSTITUTIONS THAT OPERATE EFFECTIVELY AND TO THE BENEFIT OF ALL STATES, A TREATY PUTTING THEM INTO EFFECT WOULD FACE SEVERE DIFFICULTIES IN EFFORTS TO MARSHALL SUPPORT FOR IT WITHIN THE ADMINISTRATION AND IN THE SENATE.

(2) PRODUCTION LIMITATIONS.

-- PARTICULARLY TROUBLESOME ARE THE PROVISIONAL PRODUCTION CONTROL ARRANGEMENTS THAT WERE WORKED OUT IN THE COMPROMISE WITH THE CANADIANS. ALTHOUGH THE COMPROMISE FORMULA

LIMITING SEABED PRODUCTION TO 60 PER CENT OF THE GROWTH FACTOR AFTER 5 YEARS MIGHT NOT ACTUALLY LIMIT PRODUCTION,

IT WOULD VERY LIKELY DO SO IF TECHNOLOGICAL IMPROVEMENTS SIGNIFICANTLY REDUCE THE COSTS OF SEABED MINING. THE EFFECTS OF THE FORMULA ARE UNCERTAIN IF DEMAND VARIES SHARPLY FROM THE ASSUMED 4.5 PER CENT ANNUAL INCREASE. (THE BUREAU OF MINES PROJECTS A FUTURE GROWTH IN DEMAND FOR NICKEL OF ONLY 2-1/2 PER CENT WHICH DIFFERS SIGNIFICANTLY FROM HISTORICAL PATTERNS AND, IF CLOSE TO THE MARK, WOULD DELAY CONSIDERABLY THE TIME WHEN SEABED MINING BECOMES OPERATIONAL.) EVEN IF PRODUCTION CEILINGS ARE NOT OPPRESSIVE, AMERICAN COMPANIES ARE STILL LIKELY TO CONFRONT LIMITATIONS ON THE NUMBER OF MINE SITES MADE AVAILABLE TO

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THEM. IF THE ENTERPRISE IS ALSO GIVEN PRIVILEGED STATUS, THE PRODUCTION CONTROL FORMULA WILL BE EVEN MORE UNACCEPTABLE SINCE THE ENTERPRISE WOULD LIKELY ABSORB ALL MINING SITES AVAILABLE IN THE LATE 1980S AND EARLY 1990S. (I UNDERSTAND THAT THE CANADIANS ARE AWARE THAT OUR COMPROMISE ON PRODUCTION CONTROLS IS CONTINGENT ON THIS NOT HAPPENING, BUT I AM WORRIED THAT WE MIGHT NOT BE ABLE TO GET OUT OF THE DEAL EVEN SO.)

-- EVEN THE MOST DESIRABLE FEATURE OF THE PRODUCTION CONTROL -- THE TWENTY-FIVE YEAR INTERIM PERIOD -- IS JEOPARDIZED BY REVIEW CLAUSE PROVISIONS WHICH ARE CALCULATED TO POSE A CHOICE BETWEEN ACCEPTING THE G-77'S DESIRES OR SUBMITTING TO A MORATORIUM ON NEW PROJECTS BY PRIVATE MINERS. PRESENTED WITH THIS CHOICE, WE MIGHT COUNT OURSELVES LUCKY TO ESCAPE WITH AN EXTENSION OF THE PRODUCTION LIMITATION IN RETURN FOR CONTINUED, ALBEIT LIMITED, ACCESS.

(3) TRANSFER OF TECHNOLOGY.

-- THE US HAS GONE FURTHER IN THE LAW OF THE SEA THAN ELSEWHERE IN MANDATING TECHNOLOGY TRANSFER. IT HAS BEEN OUR POSITION THAT TECHNOLOGY SHOULD BE TRANSFERRED AND THAT THIRD-PARTY ARBITRATION ASSURE THAT FIRMS AND THE AUTHORITY WILL DEAL FAIRLY WITH ONE ANOTHER. WE NEED TO EXPLORE THE WAYS IN WHICH THE PRESENT TEXTS ACCORD WITH THE DELEGATION'S INSTRUCTIONS AND DETERMINE THE POSITION THE DELEGATION SHOULD TAKE ON THIS SUBJECT AT THE NEXT SESSION.

(4) COUNCIL VOTING STRUCTURE.

-- WE SHOULD WANT TO BE CERTAIN THAT THE VOTING PROCEDURES IN THE COUNCIL ARE SIMILAR TO WHAT WE WANT IN OTHER COM-

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MODIFY AGREEMENTS: THEY SHOULD BE WEIGHTED IN SUCH A WAY AS TO REFLECT ADEQUATELY OUR ECONOMIC INTERESTS AND THEY AS TO REFLECT ADEQUATELY OUR ECONOMIC INTERESTS AND THEY SHOULD ASSURE US, TOGETHER WITH TWO OR THREE OTHER INDUSTRIAL COUNTRIES, OF EFFECTIVE BLOCKING POWER.

SITUATION IN THE NEAR TERM OFFERS LITTLE HOPE THAT WE CAN NEGOTIATE ACCEPTABLE, LET ALONE DESIRABLE, TEXTS THAT COULD BE SUPPORTED WITHIN THE US. MOREOVER, I AM WARY THAT SOME DELEGATIONS MIGHT BELIEVE THAT THE TEXTS REFLECT SOMETHING CLOSE TO A CONSENSUS. IN PARTICULAR, THE LARGE AND RAPID SHIFT OF THE US POSITION ON PRODUCTION CONTROLS LENDS CREDENCE TO THE VIEWS OF THOSE MEMBERS OF THE G-77 WHO COUNSEL A HARD LINE IN ANTICIPATION OF ADDITIONAL US CONCESSIONS. IT IS THUS IMPORTANT THAT WE NOT PUT TO ONE SIDE THE TEXTS NEGOTIATED IN GENEVA IN ORDER TO DISCUSS IN NEW YORK OTHER MORE TECHNICAL MATTERS, LEST WE GIVE THE IMPRESSION THAT WE FIND THE BROAD OUTLINES OF THE ACCESS SYSTEM ACCEPTABLE.

-- THE CURRENT SITUATION SEEMS TO PRESENT US WITH TWO BASIC POLICY OPTIONS:

-- THE FIRST OPTION IS TO SEEK AN EARLY AGREEMENT (WITHIN ONE OR TWO YEARS) ON A COMPREHENSIVE TREATY, EVEN THOUGH IT WOULD LIKELY INCLUDE AN UNSATISFACTORY SEABEDS TEXT. CHOICE OF THIS OPTION WOULD REQUIRE DECISIONS ON THE PART OF THE USG THAT THE PRICE WE PAY IN SEABEDS WILL BE MORE THAN BALANCED BY THE BENEFITS WE WOULD GAIN IN OTHER AREAS AND THAT THE DETERIORATION OF OUR CURRENT NEGOTIATION POSITION ON SEABEDS IS IRREVERSIBLE. I UNDERSTAND THAT OUR CURRENT OBJECTIVE AS REFLECTED IN THE LOS POLICY REVIEW CONDUCTED PRIOR TO THE MARCH SESSION, IS TO ACHIEVE A MINIMALLY ACCEPTABLE TEXT IN ALL AREAS, INCLUDING SEABEDS. I SUSPECT FURTHER ANALYSIS WILL REVEAL THAT THIS OPTION WOULD REQUIRE CHANGING THE PREMISE UPON WHICH WE HAVE NEGOTIATED SINCE THE BEGINNING OF UNCLOS.

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-- THE SECOND OPTION, WHICH I AM INCLINED TO FAVOR, WOULD INVOLVE A LONGER TERM COMMITMENT TO PURSUE THE NEGOTIATIONS OVER AS LONG A PERIOD AS NECESSARY, WITH CERTAIN CLEAR AND AGREED GOALS. THIS OPTION ASSUMES THAT A SEABEDS AGREEMENT MUST PROVIDE ASSURED ACCESS FOR STATE PARTIES UNDER TERMS CONSISTENT WITH OUR BASIC ECONOMIC OBJECTIVES; THAT THERE

ARE VIABLE INTERIM ALTERNATIVES TO AN INTERNATIONAL REGIME,
INCLUDING COORDINATED LEGISLATION AMONG LIKE-MINDED STATES;
AND THAT IMPORTANT STRATEGIC INTERESTS WILL NOT BE SERI-
OUSLY JEOPARDIZED BY ONGOING NEGOTIATIONS IN THE LOS
CONFERENCE.

END TEXT.

CHRISTOPHER

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